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95-357

No. 95-55

Supreme Court, U.S.
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In The

Supreme Court of the United States

October Term, 1995

PAMELA HOUSTON,

Petitioner,

vs.

ALL SAINTS HEALTH SYSTEM, INC., JENNY McNEIL and DR. KENNETH PEARCE,

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

BRIEF IN OPPOSITION FOR RESPONDENT DR. KENNETH PEARCE

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25 pp

QUESTIONS PRESENTED

1. Whether Petitioner presented sufficient summary judgment evidence to create a genuine issue of material fact of an employer/employee relationship with Dr. Pearce.

2. Whether Petitioner presented sufficient summary judgment evidence to create a genuine issue of material fact that Dr. Pearce was an agent of All Saints with respect to its employment practices.

3. Whether Petitioner filed a timely EEOC charge against Dr. Pearce.

TABLE OF CONTENTS

	Page
Questions Presented	i
Table of Contents	ii
Table of Citations	iii
Statement of the Case	1
A. Dr. Pearce Was Not An Employer, Employment Agency Or Labor Organization	1
B. Dr. Pearce Was Not Named As An Employer Who Discriminated Against Petitioner In Her EEOC Charge Of Discrimination.	1
Summary of the Argument	3
Reasons for Denying the Writ	4
I. The summary judgment in favor of Dr. Pearce should be left undisturbed because petitioner did not present sufficient evidence to create a genuine issue of material fact of an employer/employee relationship with Dr. Pearce.	4
II. The District Court correctly granted summary judgment in favor of Dr. Pearce because Petitioner did not timely file an EEOC charge against Dr. Pearce.	10
Conclusion	12

Contents

Page

TABLE OF CITATIONS

Cases Cited:

Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 106 S. Ct. 2505 (1986) 5, 6

Celotex Corp. v. Catrett, 477 U.S. 317, 106 S. Ct. 2548 (1986) 4, 5

Deal v. State Farm County Mut. Ins. Co. of Texas, 5 F.3d 117 (5th Cir. 1993) 8, 10

Dennis v. General Imaging, Inc., 918 F.2d 496 (5th Cir 1990) 5

Dunn v. State Farm Fire & Cas. Co., 927 F.2d 869 (5th Cir. 1991) 5

Fields v. Hallsville Indep. Sch. Dist., 906 F.2d 1017 (5th Cir. 1990), *cert. denied*, 498 U.S. 1026, 111 S. Ct. 676, 112 L. Ed. 2d 668 (1991) 8

Fontenot v. Upjohn Co., 780 F.2d 1190 (5th Cir. 1986) ... 5

Grant v. Lone Star Co., 21 F.3d 649 (5th Cir. 1994) 10, 12

Harbor Ins. Co. v. Trammell Crow Co., 854 F.2d 94 (5th Cir. 1988), *cert. denied*, 489 U.S. 1054, 109 S. Ct. 1315 (1989) 4

Contents

Page

International Ass'n. of Machinists and Aerospace Workers, AFL-CIO, Lodge No. 2504 v. Intercontinental Mfg. Co., 812 F.2d 219 (5th Cir. 1987) 5

Latimer v. Smithkline & French Laboratories, A Div. of Smithkline Beckman Corp., 919 F.2d 301 (5th Cir. 1990) 5

Mares v. Marsh, 777 F.2d 1066 (5th Cir. 1985) 8

Miller v. Maxwell's Int'l., Inc., 991 F.2d 583 (9th Cir. 1993), *cert. denied*, 114 S. Ct. 1049 (1994) 10, 12

Romain v. Kurek, 772 F.2d 281 (6th Cir. 1985) 12

Sosa v. Hiraoka, 920 F.2d 1451 (9th Cir. 1990) 11

Way v. Mueller Brass Co., 840 F.2d 303 (5th Cir. 1988) .. 12

Zipes v. Transworld Airlines, 455 U.S. 385, 102 S. Ct. 1127 (1982) 11

Statute Cited:

42 U.S.C. § 1981 .....*passim*

APPENDIX

Appendix A — Charge of Discrimination 1a

Appendix B — Determination Letter Dated June 3, 1993 . 5a

STATEMENT OF THE CASE

Respondent provides the following information to correct inaccuracies and omissions in the Petitioner's statement.

A. Dr. Pearce Was Not An Employer, Employment Agency Or Labor Organization.

Petitioner's Second Amended Complaint alleged that at all times material to this action she was employed by Respondent All Saints Health Care, Inc. as a registered nurse. (R. 190-91). In the Joint Pre-Trial Order the Petitioner contended that she was discharged from her employment for filing a claim for workers' compensation benefits and for filing a discrimination charge with the Equal Employment Opportunity Commission. (R. 1292). Petitioner further contended that she was discriminated against in her employment by Respondent hospital in connection with her merit raise, work breaks, 24-hour drug audit, pushing stretchers, completion of charts and funeral leave. (R. 1292). Among the Established Facts in the Joint Pre-Trial Order was the statement that Petitioner Pamela Sue Houston was an employee of and worked at Respondent All Saints Episcopal Hospital from April, 1984 to August 21, 1991. (R. 1296; *see also* Supp. Joint P-T Order, R. 1453). In contrast, there are no allegations, contentions or Established Facts that Petitioner was an employee of Dr. Kenneth Pearce, that Dr. Pearce was an employer, employment agency or labor organization or that Dr. Pearce was an agent of Respondent hospital with respect to its employment practices.

B. Dr. Pearce Was Not Named As An Employer Who Discriminated Against Petitioner In Her EEOC Charge Of Discrimination.

Petitioner's statement inaccurately represented that an EEOC charge of discrimination was filed against Dr. Pearce and that the EEOC had issued a determination letter identifying Dr.

Pearce as a discriminating or responding party to Petitioner's Title VII allegations. (Pet. for Writ, p. 8). Instead, the only employer, labor organization or employment agency listed in Petitioner's EEOC charge of discrimination was All Saints Hospital. (R. 578; A.1). The Joint Pre-Trial Order and Supplemental Joint Pre-Trial Order identified as Established Facts that the only employer named or identified in the EEOC charge as the employer who discriminated against Petitioner was All Saints Hospital. (R. 1298, 1455). Moreover, Petitioner's answer to Interrogatory No. 9 confirmed that the only charge of discrimination she had filed was against All Saints Hospital and that it resulted in a finding on June 3, 1993 by the Fort Worth Human Relations Commission that ". . . there was reasonable cause to believe that All Saints had violated the law." (R. 800-01, 841).

There was neither a charge of discrimination filed with the EEOC by Petitioner nor a determination letter issued by the EEOC identifying Dr. Pearce as a discriminating or responding party to Petitioner's Title VII allegations. Instead, the determination letter dealt exclusively with Petitioner's charge of discrimination against All Saints Hospital and its determination concerning the employment relationship between Petitioner and All Saints. (R. 841- 42; App. 5a-7a). Dr. Pearce was neither named in the determination letter nor was he copied on it. *Id.*

Among the Agreed Contested Issues of Law stated in the Joint Pre-Trial Order and Supplemental Joint Pre-Trial Order was whether Dr. Pearce can be held liable to Petitioner under Title VII and/or 42 U.S.C. § 1981. (R. 1310, 1475). The trial court determined that Petitioner did not have a 42 U.S.C. § 1981 action against Dr. Pearce as a matter of law and Petitioner has not challenged this ruling on appeal. Further, the trial court held that Petitioner did not have a Title VII cause of action against Dr. Pearce as a matter of law because Dr. Pearce was not an employer,

employment agency or labor organization with respect to Petitioner and there was no summary judgment evidence that Petitioner filed any EEOC charge, much less a timely charge, against Dr. Pearce. (R. 1487-88).

SUMMARY OF THE ARGUMENT

The summary judgment was granted in favor of Dr. Pearce because Dr. Pearce is not subject to liability under Title VII. Petitioner did not present sufficient summary judgment evidence to create a genuine issue of material fact of an employer/ employee relationship with Dr. Pearce. Instead, Petitioner stipulated in the Joint Pre-Trial Order and Supplemental Joint Pre-Trial Order that she was employed at all relevant times by Respondent hospital and that she did not have an employment contract with either Dr. Pearce or Anesthesia Care, Inc. Title VII applies to employers, employment agencies and labor organizations.

Further, the summary judgment evidence does not reflect the existence of a genuine issue of material fact as to whether Dr. Pearce functioned as an agent of her employer with respect to employment practices. No evidence was presented that All Saints delegated any employment decisions to Dr. Pearce or that he had any input regarding her employment conditions.

Furthermore, Dr. Pearce is not subject to liability under Title VII because Petitioner did not timely file an EEOC charge of discrimination against him, which is a prerequisite to any such action in district court. The only charge of discrimination filed by Petitioner with the EEOC was against the Respondent hospital, her employer. Consequently, the only determination letter issued in connection with Petitioner's EEOC charge dealt exclusively with her employment relationship with All Saints and it in no way implicated, identified or informed Dr. Pearce of a charge or

determination of discrimination prior to the filing of Petitioner's complaint against him in federal district court. For these reasons, the Fifth Circuit Court of Appeals' decision affirming the summary judgment of the trial court should be left undisturbed.

REASONS FOR DENYING THE WRIT

I.

THE SUMMARY JUDGMENT IN FAVOR OF DR. PEARCE SHOULD BE LEFT UNDISTURBED BECAUSE PETITIONER DID NOT PRESENT SUFFICIENT EVIDENCE TO CREATE A GENUINE ISSUE OF MATERIAL FACT OF AN EMPLOYER/EMPLOYEE RELATIONSHIP WITH DR. PEARCE.

The party moving for summary judgment has the initial responsibility of showing that there is no genuine issue of material fact and that it is entitled to judgment as a matter of law. *Celotex Corp. v. Catrett,* 477 U.S. 317, 326, 106 S. Ct. 2548, 2552 (1986); *Harbor Ins. Co. v. Trammell Crow Co.,* 854 F.2d 94, 98 (5th Cir. 1988), *cert. denied,* 489 U.S. 1054, 109 S. Ct. 1315 (1989). Thus, the party seeking summary judgment has the initial burden of informing the district court of the basis for its motion, and of identifying those portions of the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, which it believes demonstrate the absence of a genuine issue of material fact. *Celotex*, 477 U.S. at 323, 106 S. Ct. at 2552-53.

The extent to which a moving party must satisfy this burden depends upon whether the movant bears the burden of proof at trial on the issue or issues upon which it is seeking summary judgment. If the moving party bears the burden of proof on a claim or defense upon which it is moving for summary judgment,

it must come forward with evidence that establishes all of the essential elements of the claim or defense. *Fontenot v. Upjohn Co.*, 780 F.2d 1190, 1194 (5th Cir. 1986). In contrast, where, as here, the non-movant bears the burden of proof at trial, the movant may discharge its burden by pointing out to the court that there is an absence of evidence to support the non-movant's case. *Celotex*, 477 U.S. at 325, 106 S. Ct. at 2553-54; *International Ass'n. of Machinists and Aerospace Workers, AFL-CIO, Lodge No. 2504 v. Intercontinental Mfg. Co.*, 812 F.2d 219, 222 (5th Cir. 1987). The moving party in such a case is not required to produce evidence to negate the opponent's claims. *Latimer v. Smithkline & French Laboratories, A Div. of Smithkline Beckman Corp.*, 919 F.2d 301, 303 (5th Cir. 1990). For that reason, there is no burden on the moving party to support its motion with affidavits or other similar materials where the non-movant will bear the burden of proof at trial. *Celotex*, 477 U.S. at 323, 106 S. Ct. at 2552-53. Rather, the movant need only demonstrate that the evidence which does exist does not "present a sufficient disagreement to require submission to a jury." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 251-52, 106 S. Ct. 2505, 2511-12 (1986).

Once the movant has carried its burden, the burden shifts to the non-movant to show that summary judgment should not be granted. *Latimer*, 919 F.2d at 303. Once the movant has made the required showing, the non-movant must go beyond the pleadings and provide proof of specific facts showing a genuine issue for trial. *Celotex*, 477 U.S. at 324, 106 S. Ct. at 2553. Moreover, the affirmative evidence produced must create a fact issue concerning the existence of every component of the non-movant's case; naked assertions of an actual dispute unsupported by facts will not suffice, nor will the mere allegations of the pleadings. *Dunn v. State Farm Fire & Cas. Co.*, 927 F.2d 869, 872 (5th Cir. 1991); *Dennis v. General Imaging, Inc.*, 918 F.2d 496, 499 (5th Cir. 1990) (adopting district court's opinion). To the contrary, the evidence introduced by the non-movant must have

significant probative value. *Anderson,* 477 U.S. at 249-50, 106 S. Ct. at 2510-11.

Petitioner alleged that Dr. Pearce is liable for racial and sexual discrimination under §§ 703(a), 704 and 706 of Title VII of the Civil Rights Act of 1964. However, Title VII applies only to discrimination by employers, employment agencies, and labor organizations. To illustrate, § 703(a) states:

> It shall be an unlawful employment practice for an *employer*—
>
> (1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect of his compensation, terms, conditions, or privileges of *employment,* because of such individual's race, color, religion, sex, or national original; or
>
> (2) to limit, segregate, or classify *his employees or applicants for employment* in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his *status as an employee,* because of such individual's race, color, religion, sex, or national original.

In addition, Section 704 states:

> (a) it shall be an unlawful *employment practice* for an employer to discriminate against any of *his employees* or applicants for employment, for an employment agency or

joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs, to discriminate against any individual, or for a labor organization to discriminate against any member thereof or applicant for membership, because he has opposed any practice, made an unlawful employment practice by this title, or because he has made a charge, testified, assisted, or participated in any manner in any investigation, proceeding, or hearing under this title.

(b) It shall be an unlawful employment practice for an *employer,* labor organization, employment agency, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs, to print or cause to be printed or published any notice or advertisement relating to employment by such an employer or membership in or any classification or referral for employment by such a labor organization, or relating to any classification or referral for employment by such an employment agency, or relating to admission to, or employment in, any program established to provide apprenticeship or other training by such a joint labor-management committee indicating any preference, limitation, specification, or discrimination, based on race, color, religion, sex, or national origin, except that such a notice or

> advertisement may indicate a preference, limitation, specification or discrimination based on religion, sex or national original is a bona fide occupational qualification for employment. (Emphasis added).

The determination of an employment relationship is a two-step process. The first step is satisfaction of the definition of "employer" under § 701(b) of Title VII as a "person engaged in an industry affecting commerce who has 15 or more employees." The parties agree that Dr. Pearce meets the Title VII statutory definition of employer by virtue of employing 15 or more certified registered nurse anesthetists to assist him at the hospital. However, the summary judgment evidence failed to show that an employment relationship existed between Petitioner and Dr. Pearce, thereby defeating her efforts to have Dr. Pearce classified as her employer for Title VII purposes. *See Deal v. State Farm County Mut. Ins. Co. of Texas*, 5 F.3d 117, 118 n. 2 (5th Cir. 1993) citing *Fields v. Hallsville Indep. Sch. Dist.*, 906 F.2d 1017, 1019 (5th Cir. 1990), *cert. denied* 498 U.S. 1026, 111 S. Ct. 676, 112 L. Ed. 2d 668 (1991).

Petitioner failed to present summary judgment evidence to satisfy the "hybrid economic realities/common law control test." *Id.* at 118-19. The economic realities component of the test has focused on whether the alleged employer paid the individual's salary, withheld taxes, provided benefits and set the terms and condition of employment. *Id.* at 119; *Mares v. Marsh*, 777 F.2d 1066, 1068 (5th Cir. 1985). The control component of the test examines whether the alleged employer has the right to hire and fire, to supervise the individual's work, and to set the individual's work schedule. *Deal*, 5 F.3d at 119; *Fields*, 906 F.2d at 1019-20. The right to control and direct a person's work is the most important aspect of the control component. *Fields*, 906 F.2d at 1019.

In the case at bar, the affidavit of Kenneth Pearce, M.D. and the deposition of Petitioner Pamela Houston establish that Pamela Houston is not and never has been employed by either Kenneth Pearce, M.D. or his employer, Anesthesia Care, Inc. Rather, the affidavit of Kenneth Pearce, M.D. and the deposition of Pamela Houston further established that neither he nor his employer, Anesthesia Care, Inc., had any responsibility to control, direct or supervise the details and manner in which Pamela Sue Houston performed her job duties; nor did Dr. Pearce or Anesthesia Care, Inc. have the right or responsibility to hire, promote, set her work schedule and/or terminate Petitioner's employment.

To the contrary, Petitioner testified by deposition and stipulated in the Joint Pre-Trial Order and Supplemental Joint Pre-Trial Order that at all times material to this action she was employed by Respondent All Saints Hospital and that she did not have an employment contract with Dr. Pearce or Anesthesia Care, Inc. (R. 1296, 1453). Petitioner also stipulated that Dr. Pearce did not set her working hours, formulate or play any role in the attendance policy she was required to follow, or set the break schedule during her shift. (R. at 1466). Further, Petitioner stipulated that Dr. Pearce did not have the authority to terminate any employee of All Saints, did not order or require Petitioner to complete the drug count for the medicine box in the holding room, did not order or request that Petitioner identify patients upon their arrival in the holding room and never evaluated Petitioner's job performance for her annual review of merit pay increase. *Id.*

Furthermore, neither Dr. Pearce nor Anesthesia Care, Inc. provided wages, medical benefits, pension benefits, vacation pay or sick leave to Petitioner while she was employed at All Saints Episcopal Hospital. (R. 1468-69). Instead these benefits were provided to Pamela Houston by All Saints Hospital. (R. 1469).

Finally, Petitioner stipulated that Dr. Pearce did not request, order or otherwise compel Petitioner to push stretchers at any time and he did not play any role in the disposition of her workers' compensation claim or terminate her from her position with All Saints Hospital. *Id.*

The summary judgment evidence and applicable law is clear that Petitioner did not have an employer/employee relationship with Dr. Pearce and he is not subject to liability under Title VII. Even if Dr. Pearce was an employee of Petitioner's employer, All Saints Episcopal Hospital, he would not be subject to liability in his individual capacity. *Grant v. Lone Star Co.*, 21 F.3d 649 (5th Cir. 1994); *Miller v. Maxwell's Int'l., Inc.*, 991 F.2d 583, 587-88 (9th Cir. 1993), *cert. denied,* 114 S. Ct. 1049 (1994). Moreover, Petitioner presented no evidence that All Saints delegated any employment decisions to Dr. Pearce so that he could act as its agent. *Deal,* 5 F.3d at 119. Consequently, Dr. Pearce cannot be liable to Petitioner as an "employer" under Title VII and the district court's summary judgment should be left undisturbed.

II.

THE DISTRICT COURT CORRECTLY GRANTED SUMMARY JUDGMENT IN FAVOR OF DR. PEARCE BECAUSE PETITIONER DID NOT TIMELY FILE AN EEOC CHARGE AGAINST DR. PEARCE.

On October 15, 1991, Petitioner filed her Charge of Discrimination with the Equal Employment Opportunity Commission and the Fort Worth Human Rights Commission alleging that she had been harassed and discriminated against on the basis of her race. (A. 1-2). Petitioner stipulated in the Joint Pre-Trial Order and the Supplemental Joint Pre-Trial Order that the only employer named or identified in the Charge as the employer who discriminated against her was All Saints Hospital.

(R. 1298, 1455). The summary judgment evidence established that Petitioner has not filed a complaint with the EEOC or any local or state agency specifically naming Dr. Pearce as a discriminating party. (R. 711-14 [Pearce *Aff'd*]; App. 6a-7a Charge of Discrimination and Determination Letter; R. 800-01 [Pl. Int. Ans. No. 9]). Petitioner specifically filed charges of discrimination with the Fort Worth Human Relations Commission and the federal Equal Employment Opportunity Commission wherein Petitioner expressly named All Saints Hospital as the discriminating party. (A.1-2). Petitioner did not name Dr. Pearce as a discriminating party in this Charge of Discrimination or in any similar complaint. In addition, Dr. Pearce was not provided notice of the October 15, 1991 Charge of Discrimination or provided an opportunity to defend his interests. (R. 713)

Section 706(e) of Title VII provides that claimants such as Petitioner must file a Charge of Discrimination with the EEOC within 180 days of an act of discrimination. If, however, a party files a Charge of Discrimination with a state or local civil rights agency before filing with the EEOC, the party has 300 days in which to file a Charge of Discrimination with the EEOC. The 180-day/300-day limit serves as a judicial statute of limitations barring any subsequent civil suit with respect to a discriminatory incident occurring prior to the 180-day/300-day period. *See Zipes v. Transworld Airlines*, 455 U.S. 385, 393, 102 S. Ct. 1127, 1132 (1982); *Sosa v. Hiraoka*, 920 F.2d 1451, 1455 (9th Cir. 1990). Accordingly, Petitioner's claims of Title VII violations against Dr. Pearce are barred by the Title VII statute of limitations because Petitioner did not file a Charge of Discrimination against Dr. Pearce with the EEOC within the requisite 180/300-day time limit.

Petitioner has argued unsuccessfully on appeal that simply alluding to Dr. Pearce in the "Discrimination Statement" of the October 15, 1991 Charge of Discrimination against All Saints

Hospital, without providing him notice of the charge or an opportunity to defend himself, satisfies the requirement of § 706(e) of Title VII. A claimant is barred from suing a party not named in an EEOC complaint unless there is a clear identity of interests between the unnamed party and the party named in the EEOC complaint. *Way v. Mueller Brass Co.*, 840 F.2d 303, 307 (5th Cir. 1988); *see Romain v. Kurek*, 772 F.2d 281 (6th Cir. 1985). For example, parties may be considered to have a "clear identity of interests" if the unnamed party and the named party are co-owners of a company. *Romain*, 772 F.2d at 281. The summary judgment evidence does not establish a "clear identity of interests" between All Saints Hospital and Dr. Pearce. Even if the evidence showed that Dr. Pearce was an employee of All Saints, he would not be subject to individual liability. *Grant*, 21 F.3d 649; *Miller*, 991 F.2d 583, 587-88. Moreover, Petitioner's failure to provide Dr. Pearce with notice of the October 15, 1991 Charge of Discrimination and provide him with an opportunity to defend his interests, even if he had a "clear identity of interest" with All Saints Hospital, defeats the purpose of § 706(e) of Title VII and should not serve to satisfy the necessary condition precedent to liability.

CONCLUSION

The United States Court of Appeals for the Fifth Circuit was correct in affirming the district court's summary judgment in favor of Respondent Kenneth Pearce, M.D. Dr. Pearce is not subject to liability to Petitioner under Title VII of the Civil Rights Act of 1964 because he is neither an employer, employment agency or labor organization with respect to Petitioner's complaints of discrimination. Further, the summary judgment evidence does not reflect the existence of a genuine issue of material fact as to whether Dr. Pearce was Petitioner's "employer" for Title VII purposes.

Finally, the summary judgment should be left undisturbed because Petitioner did not timely file an EEOC charge against Dr. Pearce with notice to Dr. Pearce so that he would have an opportunity to appear and defend himself. A claimant is barred from suing a party not named in an EEOC complaint unless there is a clear identity of interest between the unnamed party and the party named in the complaint. In this regard, the summary judgment evidence does not establish a "clear identity of interest" between All Saints and Dr. Pearce.

For the reasons stated, the Judgment of the United States Court of Appeals for the Fifth Circuit should be left undisturbed with costs taxed to Petitioner.

Respectfully submitted,

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APPENDIX A — CHARGE OF DISCRIMINATION

CHARGE OF DISCRIMINATION

ENTER CHARGE NUMBER
I FEPA 31A92019
I EEOC 31A920019

(State or local Agency, if any)
FORT WORTH HUMAN RELATIONS COMMISSION
and EEOC

NAME
Pamela Sue Houston

HOME TELEPHONE NO.
817/293-5473

STREET ADDRESS
3228 Bunkerhill Drive

CITY, STATE AND ZIP CODE
Fort Worth, Texas 76140

COUNTY
Tarrant

NAMED IS THE EMPLOYER, LABOR ORGANIZATION, EMPLOYMENT AGENCY, APPRENTICESHIP COMMITTEE, STATE OR LOCAL GOVERNMENT AGENCY WHO DISCRIMINATED AGAINST ME (If more than one list below.)

NAME
All Saints Hospital

Appendix A

NO. OF EMPLOYEES/MEMBERS
15+

TELEPHONE NUMBER
817/926-2544

STREET ADDRESS
1400 8th Avenue

CITY, STATE AND ZIP CODE
Fort Worth, Texas 76101

* * *

CAUSE OF DISCRIMINATION BASED ON

☒ *BLACK* Race

* * *

DATE MOST RECENT OR CONTINUING DISCRIMINATION TOOK PLACE
April 15, 1991 and continuing

THE PARTICULARS ARE

I. PERSONAL HARM:
A. Since April 15, 1991, I have been treated differently in the terms and conditions of my employment.

II. RESPONDENT'S REASON FOR ADVERSE ACTION:
A-1. I have been told by Ms. Jenny McNeil, Caucasian, Surgery Supervisor, that regardless of my 100% performance, I would be docked 1% of a merit raise due to my absences.

Appendix A

A-2. I have been told by Ms. Jenny McNeil, that I am to transport patients to their surgical rooms.

A-3. I have been told by Ms. Jenny McNeil that it is a shame that Dr. Kenneth Pierce, Caucasian, Physician, continues to subject me to racial slurs and a racially harassing atmosphere.

III. DISCRIMINATION STATEMENT:
I believe that I have been discriminated against because of my race, Black, in violation of Title VII of the Civil Rights Act of 1964, as amended, and the City of Fort Worth's Fair Employment Ordinance No. 7278, as amended, because:

A-1. On or about April 15, 1991, I was informed that my merit pay increase would only be for 3% due to my absences even though I had scored 105% on my Employee Performance Evaluation score sheet. I am aware of Caucasian RNs whose excessive absences have never been a problem even though their non-attendance is in clear violation of written policy.

A-2. Since May 17, 1991, I have been forced to push hospital bed stretchers. Surgical Orderlies normally push patients as part of their job duties. As an RN, I protested these forced duties. Caucasian RNs are not treated this way.

A-3. I have made repeated complaints to my supervisor, Ms. Jenny McNeil about Dr. Pierce's racial slurs, racial jokes, and in general the racially harassing atmosphere that he has subjected me to. Ms. McNeil's response was that it is a shame that Dr. Pierce is that way. No action has even been taken to correct Dr. Pierce's behavior.

Appendix A

☒ I also want this charge filed with the EEOC. I will advise the agencies if I change my address or telephone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures.

I declare under penalty of perjury that the foregoing is true and correct.

s/ *Pamela Houston*
Charging Party (*Signature*)
Date *October 15, 1991*

NOTARY
s/ *Raul Duran*
I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.

SIGNATURE OF COMPLAINANT
s/ *Pamela Houston*
SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE
(Day, month, and year)
15-10-91

APPENDIX B — DETERMINATION LETTER DATED JUNE 3, 1993

CITY OF FORT WORTH, TEXAS
Certified Return Receipt
#P 374 691 856

HUMAN RELATIONS COMMISSION
1000 THROCKMORTON STREET
FORT WORTH, TEXAS 76102

June 03, 1993

Ms. Pamela Sue Houston
3228 Bunkerhill Drive
Fort Worth, Texas 76140

Re: Pamela Sue Houston vs. All Saints Episcopal Hospital
HRC Charge No. 31A92019
EEOC charge No. 31A920019
Date Filed: October 15, 1991
Date Served: October 17, 1991

DETERMINATION

Dear Ms. Houston:

Under the authority vested in me by Section 4, of the City of Fort Worth's Fair Employment Ordinance No. 7278, as amended, I issue on behalf of the Commission, the following findings as to the merits of the subject charge.

The timeliness, deferral and all other jurisdictional requirements having been met, the Respondent is an employer within the meaning of Employment Ordinance No. 7278 and Title VII.

Appendix B

The Charging Party alleges that the Respondent discriminated against her, in violation of the City of Fort Worth's Fair Employment Ordinance No. 7278, as amended, and of Title VII of the Civil Rights Act of 1964, as amended, because of her race, Black. Specifically, the Charging Party contends that her merit pay increase was only 3% due to her absences, even though she had scored 105% on her performance rating. The Charging Party contends she was treated differently in that she was required to push occupied bed stretchers and not relieved for breaks/lunch breaks. The Charging Party also contends she was subjected to a racially harassing atmosphere.

The Respondent's officials deny the allegations of discrimination and contend that the doctor who the charging Party accuses of racially derogatory statements was not an employee of theirs. The Respondent contends they have taken steps to raise individual physician awareness in the worksite concerning racial comments.

The findings indicate that a similarly situated Caucasian nurse received a 3% merit increase after being rated "E" in attendance and 55 points in performance. The Charging Party also received a 3% merit increase after being rated "E" in attendance, but with over 100 points in performance. The findings indicate the Charging Party returned from an on-the-job injury on May 31, 1991 with a doctor's recommendation to continue her duties and to obtain assistance with transporting stretchers if needed. The evidence indicates that the Charging Party was required to push occupied bed stretchers in spite of these doctor's requirements. Witness testimony indicates that no similarly situated non-Black comparables were pulled from their normal duties and required to push stretchers as the Charging party was. Witness testimony indicates that the Charging Party was not given assistance in pushing the occupied bed stretchers.

Appendix B

The evidence indicates that the Charging Party was treated differently than similarly situated non-Black employees in that she was not relieved for breaks/lunch breaks. The evidence also indicates that during July/August 1991, the Charging party complained to management of the racial comments/jokes made by a Caucasian doctor. Witness testimony supports the Charging Party's allegation regarding racially derogatory statements having been made by a Caucasian doctor with whom the Charging Party worked. No evidence was found to indicate that the Respondent took any action to correct these conditions prior to the Charging Party's complaint.

Examination of the evidence indicates that there is reasonable cause to believe the allegation to be true. No finding is made to any other issue raised, or which might be construed to have been raised by the subject charge.

Having determined that there is reasonable cause to believe that the law has been violated, I now invite the parties to join with the Commission in a collective effort toward a joint resolution of the matter and to eliminate unlawful employment practices. A representative of the Commission will contact each party in the near future to begin the conciliation process; until then, no action is required.

On Behalf of the Commission:

"S/ Michael D. Ivey"
Michael D. Ivey
Interim Executive Director
Forth Worth Human Relations Commission

MKI: lkw
cc: All Saints Episcopal Hospital file